

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

NOV - 7 2006

*Federal Communications Commission
Office of the Secretary*

In the Matter of the Application of)

CITIZENS COMMUNICATIONS COMPANY)

File No. ITC-T/C-2006-0929-00450

and)

WC Docket No. 06-184

**COMMONWEALTH TELEPHONE
ENTERPRISES, INC.**)

And Their Operating Subsidiaries,)
For Grant of Authority Pursuant to)
Section 214 of the Communications Act of)
of 1934 and Section 63.04 and 63.18 of the)
Commission's Rules to Complete a)
Transfer of Control of Commonwealth Telephone)
Enterprises, Inc., a Domestic and International)
Carrier, to Citizens Communications Company)

**RESPONSE TO REQUEST TO REMOVE APPLICATION FROM
STREAMLINED PROCESSING**

Commonwealth Telephone Enterprises, Inc. ("Commonwealth") and Citizens Communications Company ("Citizens") (together, "Applicants") hereby respond to the Request to Remove Application From Streamlined Processing ("Request") filed by RCN Corporation ("RCN") on November 1, 2006. For the reasons stated below, RCN's request is utterly lacking in merit, and the International Bureau should permit the above-captioned Application to be granted as a matter of course on streamlined processing. RCN fails even to state any facially credible grounds for delaying approval of the Application.

The above-captioned Application was filed with the Commission on September 29, 2006, and on October 27, the International Bureau issued Public Notice No. 01082S accepting the

cc. of Copies rec'd 0 + 8
List A B C D E

Application for streamlined processing. By the terms of the Public Notice, and in accordance with 47 CFR § 63.12, the Application will be deemed granted as of November 10, “unless the Commission has informed the applicant in writing, within 14 days after the date of this public notice, that the application, on further examination, has been deemed ineligible for streamlined processing.” The Application seeks authorization for Commonwealth to transfer control of its *international* operating authorizations to Citizens in connection with a proposed acquisition of Commonwealth. A separate, parallel application for transfer of control of Commonwealth’s *domestic* operating authorizations is pending before the Wireline Competition Bureau in WC Docket No. 06-184.

In support of its Request, RCN states only that it “believes that the transaction described in the proposed transactions raise serious and significant public interest concerns and that interested parties, including RCN, intend to file substantive comments related to the proposed transaction....” It does not bother to identify what those “public interest concerns” might be. The Bureau could disregard the RCN filing for this reason alone. Although the Bureau does have discretionary authority to remove applications from streamlined processing, it would be improper to take action based merely on a party’s unsubstantiated assertion that it believes it has undisclosed grounds for objecting to the application.

However, in separate *ex parte* letters entered in the record, RCN has provided small clues as to the likely nature of its objections. In particular, in three separate *ex parte* letters dated October 30, October 31, and November 1, 2006, respectively, RCN alleges “certain anticompetitive behavior by Commonwealth *as an incumbent local exchange carrier in Pennsylvania* that has prevented RCN from obtaining the authority to *provide telephone service*

to residential customers in Commonwealth's suburban markets using RCN's own facilities."¹ In other words, the only alleged "public interest" issue that RCN seeks to raise relates to RCN's ability to offer local telephone service in Pennsylvania. On its face, this objection (even if it had any merit) has nothing to do with the proposed transfer of control of *international* authorizations, and therefore is not a valid reason to request removal of the Application from streamlined processing.² In addition, this local Pennsylvania certification issue is already—and properly—being addressed in proceedings before the Pennsylvania Public Utilities Commission.³

Streamlined processing of the Application is governed by 47 CFR § 63.12. As the Commission explained when it adopted the current version of this rule,

We have, in the past, stated that applications that qualify for streamlined processing do not generally raise public interest issues because, in those cases, our generally applicable safeguards, the benchmark settlement rate condition, and dominant carrier regulations (where applicable) – rather than denial of applications – will be sufficient to prevent anticompetitive effects in the U.S. market. Based on the record in this proceeding, we reaffirm this finding and further conclude that there is *no reason to routinely seek comment on competitive or other issues that parties may seek to raise* in the context of streamlined applications. The likelihood that the Commission would deem a competitive or other issue raised by a commenter sufficiently serious to warrant denying a streamlined application is so remote that the potential benefits of seeking such comment are outweighed by the real benefits of eliminating the possibility that such comments would render an application ineligible for streamlining. These real benefits include a shorter period of time from filing an application to grant of the application and, significantly, *the added certainty that an applicant*

¹ Letter from Michael Fleming to Marlene Dortch, WC Docket No. 06-184, filed Oct. 30, 2006; letter from Michael Fleming to Marlene Dortch, WC Docket No. 06-184, filed Oct. 31, 2006; letter from Brian McDermott to Marlene Dortch, WC Docket No. 06-184, filed Nov. 1, 2006 (emphasis added).

² Commonwealth denies RCN's allegation of anticompetitive conduct in its entirety, and will respond in more detail when, and if, RCN files comments providing the substance of its allegations.

³ *Application of RCN Telecom Services, Inc. for approval to Amend its Certificate of Public Convenience to offer, render, furnish or supply telecommunications services to the public as a Competitive Local Exchange Carrier in the Service Territory of Commonwealth Telephone Company*, Docket No. A-310554 F0002AMA (Pa. PUC filed May 1, 2006).

would have as a result of knowing that its application cannot be held up by a vaguely drafted petition to deny filed by its competitors.

1998 Biennial Regulatory Review – Review of International Common Carrier Regulations, 14 FCC Rcd 4909, para. 12 (1999) (emphasis added) (*International Streamlining Order*). RCN hasn't even bothered to submit a "vaguely drafted" petition to deny—it has not included any basis whatsoever for its request, except that it *might* submit a petition to deny with respect to another application at a later date.

RCN's objections to streamlined processing here are even less substantial than those that the Wireline Competition Bureau rejected in the context of a domestic Section 214 transfer in a recent decision.⁴ In that case, payphone owners objected to a streamlined transfer of control on the ground that the transaction might affect their ability to collect dial-around compensation from the transferors. The Wireline Competition Bureau found that it would be improper to deny streamlined processing based on "an unadjudicated claim in a pending Commission complaint proceeding," and that the transfer of control had no effect on the issues in the complaint proceeding. Here, RCN is trying to derail Applicants' transaction based on unadjudicated claims in a proceeding pending in a different forum entirely, the Pennsylvania Public Utility Commission. For the same reasons adopted by the Wireline Competition Bureau in *UCN*, the International Bureau should reject RCN's Request.

Not only is RCN's objection based on precisely the sort of "competitive issue" that the Commission sought to discourage in adopting the streamlined processing procedure, but it is based on an issue relating to *domestic* rather than international competition, and a *local intrastate*

⁴ *Notice of Streamlined Domestic 214 Application Granted*, 20 FCC Rcd. 11153 (WCB June 27, 2005), *reconsideration denied*, *UCN, Inc., Transferee, Transtel Communications, Inc., Tel America of Salt Lake City, Inc., Extelcom, Inc., Transferors*, 20 FCC Rcd 16711 (WCB Oct. 25, 2005) ("*UCN*").

domestic issue at that. RCN cannot possibly show that its entry (or inability to enter) into the local telephone market in suburban areas of eastern Pennsylvania will have any effect whatsoever, much less a material effect, on the operation of competitive forces in the market for international telecommunications services.

The *International Streamlining Order* makes clear that removal from streamlined processing must be based upon “public interest concerns within the scope of current Commission policies.”⁵ Those concerns may include “national security, law enforcement, foreign policy, and trade policy considerations[.]”⁶ Here, RCN has not even alleged the existence of any issue within the scope of the Commission’s policies relating to international services.

Finally, RCN suggests that if the International Bureau does not grant its request, “it could potentially find itself in the awkward position of having approved an application that is contested before a separate bureau of the Commission,” referring to the Applicant’s parallel domestic transfer of control.⁷ In substance, RCN admits that it has no valid grounds whatsoever to object to the transfer of international authorizations, but still asks the International Bureau to delay action so that it can assert its meritless objections to the domestic transfer before another Bureau.⁸ This is tantamount to an admission that RCN’s Request has been “interposed for delay,” in violation of 47 CFR § 1.52.

⁵ *Id.*, para. 14.

⁶ *Id.*, para. 15, citing *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23891, 23919 para. 61 (1997).

⁷ We note that the Wireless Bureau has already granted the applications to transfer control of Commonwealth’s wireless licenses to Citizens, and there is nothing “awkward” about the Commission’s position with respect to those grants.

⁸ Further, RCN cannot show that any harm would occur if the international application were granted before the domestic application, since the Applicants cannot close their transaction until they receive all necessary FCC approvals.

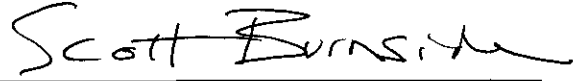
Moreover, the Commission should take this opportunity to caution RCN against further violations of § 1.52 of its rules of procedure.² That rule not only prohibits the filing of pleadings solely for delay, but also requires that the signer of each pleading attest that “there is good ground to support it[.]” If RCN files further comments in this proceeding or in WC Docket No. 06-184 relating to its allegations of “anticompetitive conduct,” it should be prepared to demonstrate “good ground” for asking the Commission to consider such non-transaction-related disputes in the context of a merger application proceeding, despite its refusal to do so in many past cases.¹⁰ RCN should also be prepared to show “good ground” for characterizing Commonwealth’s participation in RCN’s certification proceeding before the Pennsylvania commission as “anticompetitive,” in light of Supreme Court rulings rejecting antitrust allegations based solely on such permitted exercises of First Amendment rights.¹¹ Most importantly, RCN should be prepared to demonstrate why its pleading is not motivated exclusively by its interest in holding up this transaction in an effort to obtain concessions in the Pennsylvania dispute to which it would not otherwise be legally entitled.

² See Public Notice, *Commission Taking Tough Measures Against Frivolous Pleadings*, FCC 96-42, 11 FCC Rcd 3030 (1996).

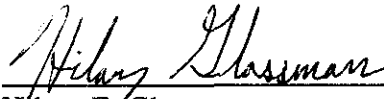
¹⁰ See, e.g., *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and Subsidiaries, Debtors-In-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees*, Memorandum Opinion and Order, MB Docket 05-192, FCC 06-105 (rel. July 21, 2006); *SBC Communications Inc. and AT&T Corp., Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 05-65, FCC 05-183 (rel. Nov. 17, 2005); *Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 05-75, FCC 05-184 (rel. Nov. 17, 2005); *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, 16 FCC Rcd 6547 (2001); *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, 13 FCC Rcd 18025 (1998); *MFS Communications Company, Inc. and WorldCom, Inc. Application for authority pursuant to Section 214 of the Communications Act of 1934, as amended, to transfer control of international authorizations; Eagle Uplink Corporation Application for authority pursuant to Section 25.118 of the Commission's rules to transfer control of earth station licenses*, 11 FCC Rcd 21164 (1996).

¹¹ *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 US 127 (1961); *United Mine Workers v. Pennington*, 381 US 657 (1965).

Respectfully submitted,



Scott Burnside
Senior Vice President—Regulatory and
Government Relations
Commonwealth Telephone Enterprises, Inc.
100 CTE Drive
Dallas, PA 18612-9774



Hilary E. Glassman
Senior Vice President and General Counsel
Citizens Communications Company
3 High Ridge Park
Stamford, Connecticut 06905

Dated: November 7, 2006